OCA 87-6198
28 December 1987

MEMORANDUM FOR: Chief, Logistics & Procurement Law Division/OGC
Director of Logistics

FROM: [redacted] Legislation Division STAT
Office of Congressional Affairs

SUBJECT: Public Building Amendments of 1987, H.R. 2790

1. Attached for your review and comment is a copy of the above-captioned bill. The House of Representatives passed this bill on 14 December 1987, and the Office of Management and Budget (OMB) has asked for our comments.

2. The bill places a limit on the amount of alterations to buildings done without congressional approval. It also places strictures on the type of space which may be leased. It allows time financing for building acquisition or construction. Its last major feature is a requirement that buildings comply with nationally recognized building codes, although there is an exception for national security.

3. OMB asked for comments by 28 December 1987. I informed OMB that due to the holidays we will be unable to comply with this deadline. Please refer your comments to me by 31 December 1987, so that we may relay them to OMB as soon as possible. You may telephone me on [redacted] if you have any questions. STAT

[redacted] STAT

Attachment

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the Ayatollah and carbon monoxide. This is wrong. Carbon monoxide causes tumors. And the Ayatollah causes security headaches. We don't need either.

We ought to move away from these twin evils and the farmers of America have the product that can help: Ethanol.

This bill should be passed and I hope my colleagues agree.

Mr. DURBIN. Mr. Speaker, for the past 7 years, the Reagan administration has advocated a free market approach to energy policy that has essentially left the United States totally vulnerable to the uncertainties of foreign crude oil politics for the liquid fuels we depend on to run the transportation sector of the economy. As a result, our dependence on foreign crude oil has grown to the point where we are as vulnerable to a supply disruption as we were in the late 1970's.

Through the foresight of the chairman of the Energy and Power Subcommittee, we have a bill before us today that takes an important step in the development of a long-term energy security policy for the United States.

This bill recognizes that the United States needs to develop its capacity for using alternative fuels such as ethanol and methanol.

It recognizes that although all of the cars being built in America today can run on a motor fuel containing 10 percent ethanol blended with gasoline, we currently have available very few automobiles that can be operated on alcohol fuels instead of gasoline.

It recognizes that the technology has been developed and is being perfected to incorporate ethanol and methanol more fully into our Nation's transportation fuel system.

And it provides modest incentives to encourage that transition.

Alcohol fuels can significantly reduce our reliance on imported oil, improve the quality of our air, provide a market for our abundant supplies of corn and coal, and offer employment opportunities in the industries that would produce alternative fuels.

In Brazil, all automobiles run on either ethanol blends or pure ethanol. Brazil's energy policy has allowed it to substantially reduce its dependence on foreign oil. As a result, Brazil's alcohol producers are able to run advertisements trumpeting the country's energy independence. One such advertisement shows a picture of a warship in the Persian Gulf with the headline "The Alcohol for Your Car Does Not Pass Through Here." the text of the ad points out that the country's motor fuel supply is not dependent on anyone else and cannot be cut off by a war in the Middle East.

The rule for H.R. 3399 adds to the bill an amendment calling for a study of other countries' experience with alternative fuels, including Brazil's program. Perhaps someday, because of this legislation and other measures promoting the use of ethanol and methanol, we will also be able to say that the fuels for our cars do not pass through the Persian Gulf.

Mr. OXLEY. Mr. Speaker, I rise today in strong support of H.R. 3399, the Alternative Motor Fuels Act of 1987. My colleagues should be aware that legislation similar to H.R. 3399 was passed by this body under suspension only last year, but the Senate failed to act on it. Thus, we are here again today to consider legislation to encourage the use of alternative motor fuels such as methanol, ethanol, and compressed natural gas.

Today, we find ourselves in the somewhat uncomfortable position of importing large amounts of petroleum from unstable regions of the world. To address our Nation's energy security, we have developed the strategic petroleum reserve, which we are continuing to fill so that we will have a secure source of fuel in the event of a total cutoff of all oil imports. However, it is important that we have available fuel sources that are not derived from petroleum, both for traditional energy security reasons and for environmental reasons. While the quality of the air we breathe has undoubtedly improved since the 1970's, vehicle emissions continue to be a significant source of air pollution—but they are one source that can be reduced if alternative, cleaner burning fuels are available to the driving public.

It's like the chicken and the egg, however. The refiners would not make alternative fuels without vehicles to burn them, and the auto manufacturers would not make the cars without first having the available fuel. Therefore, this bill in effect creates a market for alternative-fueled vehicles by requiring the Federal Government to purchase them and changes the fuel economy standards to give manufacturers an incentive to produce them.

This is a modest proposal that takes the first step toward developing alternative motor fuels. It does not favor one fuel over another. It does not require the blending of all gasoline supplies. It gives the auto manufacturers the flexibility they need to develop alternative-fueled vehicles, and it gives the refiners the flexibility they need to develop fuels that are both cleaner and safer. I urge my colleagues to support H.R. 3399.

Mr. MOORHEAD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SHARP. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Indiana [Mr. SHARP] that the House suspend the rules and pass the bill, H.R. 3399, as amended.

The question was taken.

Mr. SCHULZE. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

PUBLIC BUILDING AMENDMENTS OF 1987

Mr. LANCASTER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2790) to improve the efficiency and effectiveness of management of public buildings as amended.

The Clerk read as follows:

H.R. 2790

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Public Buildings Amendments of 1987."

SEC. 2. INCREASED THRESHOLD FOR APPROVAL PROCESS.

Sections 4(b) and 7(a) of the Public Buildings Act of 1959 (40 U.S.C. 603(b) and 606(a)) are amended by striking out "$500,000" each place it appears and inserting in lieu thereof "$1,500,000".

SEC. 3 LIMITATIONS ON LEASING AUTHORITY.

(a) LIMITATION ON APPROPRIATIONS FOR LEASING CERTAIN SPACE.—Section 7(a) of the Public Buildings Act of 1959 (40 U.S.C. 606(a)) is amended by inserting after the second sentence the following new sentence: "No appropriation shall be made to alter any building, or part thereof, which is under lease by the United States for use for a public purpose if the cost of such alteration would, when added to the cost of all other alterations made to such building or part thereof during the term of the lease (including extensions, amendments, or supplements) which have been paid for by the United States exceeds $1,500,000 unless such alteration has been approved by resolutions adopted by the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives.".

(b) LIMITATION ON LEASING CERTAIN SPACE.—Section 7 of such Act (40 U.S.C. 606) is amended by adding at the end thereof the following new subsections:

"(e) LIMITATION ON LEASING CERTAIN SPACE.—Notwithstanding any other provision of this Act, the Administrator may not lease any space to accommodate—

"(1) major computer operations;

"(2) secure or sensitive activities related to the national defense or security, except in any case in which it would be inappropriate to locate such activities in a public building or other facility identified with the United States Government;

"(3) offices which would require major alterations in the structure or mechanical system of the building to be leased; or

"(4) a permanent courtroom, judicial chamber, or administrative office for any United States court;

except that the Administrator may lease such space if the Administrator first determines, for reasons set forth in writing, that leasing such space is necessary to meet requirements which cannot be met in public buildings and submits such reasons to the Committee on Environment and Public Works and Transportation of the House of Representatives.

"(f) USE OF LEASING FUNDS.—Funds made available after the date of the enactment of this subsection to the Administrator for payment of rents shall also be available for the purpose of leasing space in buildings erected by the lessor on land owned by the United States.".

SEC. 4. DOLLAR AMOUNT ADJUSTMENT.

Section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606) is further amended by adding at the end the following new subsection:

"(g) DOLLAR AMOUNT ADJUSTMENT.—Any dollar amount referred to in this section and section 4(b) of this Act may be adjusted by the Administrator annually to reflect a percentage increase or decrease in construction costs during the preceding calendar year, as determined by the composite index of construction costs of the Department of Commerce. Any such adjustment shall be expeditiously reported to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives.".

SEC. 5. TIME FINANCING.

Section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606) is further amended by

adding at the end thereof the following new subsection:

"(h) TIME FINANCING.—

"(1) ISSUANCE OF DEBT INSTRUMENTS.—Whenever the Administrator determines that the best interest of the United States will be served, the Administrator is authorized to issue debt instruments for purchase by the Secretary of the Treasury, to the extent authorized in annual appropriations Acts, in amounts necessary to finance the acquisition or construction of any public building.

"(2) TERMS AND CONDITIONS.—Debt instruments issued under this subsection shall be upon such terms and conditions as may be prescribed by the Secretary of the Treasury, taking into account that repayments shall not begin until the building is ready for occupancy and shall not extend beyond the useful life of the building but in no case for more than 30 years from the date of the initial repayment.

"(3) INTEREST RATE.—Debt instruments issued under this subsection shall bear interest at a rate determined by the Secretary of the Treasury taking into consideration the average market yield an outstanding marketable debt instruments of the United States of comparable maturity.

"(4) LIMITATIONS.—No authorization shall be made in an appropriation Act for the issuance of debt instruments under this subsection to finance the acquisition or construction of any public building for which a prospectus is required under this section, unless such acquisition or construction has been approved under this section.

"(5) BUDGETARY AND ACCOUNTING TREATMENT.—Notwithstanding any other provision of law, for budgetary and accounting purposes—

"(A) debt instruments authorized to be issued under this subsection in a fical year shall be treated as budget authority in such fiscal year only to the extent that such debt instruments are issued in such fiscal year; and

"(B) debt instruments issued under this subsection shall be treated as outlays in a fiscal year only to the extent that such debt instruments are liquidated in such fiscal year.".

SEC. 6. STATE ADMINISTRATION; SPECIAL RULES FOR LEASED BUILDINGS.

The Public Building Act of 1959 (40 U.S.C. 601-616) is amended by adding at the end thereof the following new sections:

"SEC. 19. STATE ADMINISTRATION.

"Notwithstanding any other provision of law, the Administrator may, whenever the Administrator considers it desirable, relinquish to a State, or to a commonwealth, territory, or possession of the United States, all or part of the jurisdiction of the United States over land or interests under the control of the Administrator in such State, commonwealth, territory, or possession. Relinquishment of jurisdiction under this section may be accomplished by filing with the Governor (or if none exists, with the chief executive officer) of such State, commonwealth, territory, or possession a notice of relinquishment to take effect upon acceptance thereof, or in such other manner as may be prescribed by the laws of the State, commonwealth, territory, or possession where such lands are situated. The authority granted by this section is in addition to and not instead of that granted by any other provision of law.

"SEC. 20. SPECIAL RULES FOR LEASED BUILDINGS.

"(a) SPECIFICATIONS.—Notwithstanding the provisions of section 210(h)(1) of the Federal Property and Administrative Service Act of 1949, the Administrator shall not make any agreement or undertake any commitment which will result in the construction of any building which is to be constructed for lease to, and for predominant use by, the United States until the administrator has by regulation established detailed specification requirements for such building.

"(b) COMPETITIVE BIDS.—The Administrator may procure the construction of any building which is being constructed for lease to, and for predominant use by, the United States only by publicly soliciting competitive bids.

"(c) INSPECTIONS.—The Administrator shall inspect every building to be constructed for lease to, and for predominant use by, the United States during the construction of such building in order to determine that the specifications established for such building are complied with.

"(d) ENFORCEMENT.—

"(1) POST-CONSTRUCTION EVALUATION.—Upon completion of a building constructed for lease to, and for predominant use by, the United States, the Administrator shall evaluate such building for the purpose of determining the extent, if any, of failure to comply with the specifications referred to in this section.

"(2) CONTRACT CLAUSE.—The Administrator shall ensure that any contract entered into for a building described in paragraph (1) shall contain provisions permitting a reduction of rent during any period when such building is not in compliance with such specifications.".

SEC. 7. COMPLIANCE WITH NATIONALLY RECOGNIZED CODES.

(a) IN GENERAL.—The Public Buildings Act of 1959 (40 U.S.C. 601-616) is further amended by adding at the end the following new section:

"SEC. 21. COMPLIANCE WITH NATIONALLY RECOGNIZED CODES.

"(a) BUILDING CODES.—Each building constructed or altered by a Federal agency shall be constructed or altered, to the maximum extent feasible, in compliance with one of the nationally recognized model building codes and with other applicable nationally recognized codes. Such other codes shall include, but not be limited to, electrical codes, fire and life safety codes, and plumbing codes, as determined appropriate by the Administrator. In carrying out this subsection, the Administrator shall use the latest edition of the nationally recognized codes referred to in this subsection.

"(b) ZONING LAWS.—Each building constructed or altered by a Federal agency shall be constructed or altered, to the maximum extent feasible, in compliance with all requirements (other than procedural requirements) of—

"(1) zoning laws, and

"(2) laws relating to landscaping, open space, minimum distance of a building from the property line, maximum height of a building, historic preservation, and esthetic qualities of a building, and other similar laws,

of a State or a political subdivision of a State that would apply to such building if it were not a building constructed or altered by a Federal agency.

"(c) SPECIAL RULES.—

"(1) STATE AND LOCAL GOVERNMENT CONSULTATION, REVIEW AND INSPECTIONS.—For purposes of meeting the requirements of subsections (a) and (b) with respect to a building, the Administrator (or the head of a Federal agency with authority to construct or alter buildings) shall—

"(A) in preparing plans for such building, consult with appropriate officials of the State or political subdivision, or both, in which the building is to be constructed or altered

"(B) Upon request, submit such plans in a timely manner to such officials for review by such officials for a reasonable period of time not exceeding 30 days; and

"(C) permit inspection by such officials during construction or alteration of the building, in accordance with the usual schedule of inspections for construction or alteration of buildings in the locality, if such officials provide to the Administrator or the head of the Federal agency, as appropriate—

"(i) before construction of the building is begun a copy of such usual schedule; and

"(ii) reasonable notice of their intention to conduct any inspection before conducting such inspection.

"(2) LIMITATION ON STATE RESPONSIBILITIES.—Nothing in this section shall impose an obligation on any State or political subdivision to take any action under paragraph (1).

"(d) STATE AND LOCAL GOVERNMENT RECOMMENDATIONS.—Appropriate officials of a State or a political subdivision of a State may make recommendations to the Administrator or the head of a Federal agency, as the case may be, concerning measures necessary to meet the requirements of subsections (a) and (b). Such officials may also make recommendations to the Administrator or the head of the agency concerning measures that should be taken in the construction or alteration of a building to take into account local conditions. The Administrator or the head of the agency shall give due consideration to any such recommendations.

"(e) EFFECT OF NONCOMPLIANCE.—No action may be brought against the United States and no fine or penalty may be imposed against the United States for failure to meet the requirements of subsection (a), (b), or (c) of this section or for failure to carry out any recommendation under subsection (d).

"(f) LIMITATION ON LIABILITY.—The United States and its contractors shall not be required to pay any amount for any action taken under this section by a State or a political subdivision of a State.

"(g) APPLICABILITY TO CERTAIN BUILDINGS.—This section applies to any project for construction or alteration of a building for which funds are first appropriated for a fiscal year beginning after September 30, 1989.

"(h) NATIONAL SECURITY WAIVER.—This section shall not apply with respect to any building if the Administrator determines that the application of this section to such building would adversely affect national security. A determination under this subsection shall not be subject to administrative or judicial review.".

(b) CERTAIN OTHER AUTHORITIES.—Nothing in the amendment made by subsection (a) shall be construed to affect the authorities granted in sections 5, 6, and 8 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f, 403g, and 403j).

(c) NOTIFICATION OF FEDERAL AGENCIES.—Not later than 180 days after the date of the enactment of this section, the President shall notify the head of each Federal agency of the requirements of section 21 of the Public Buildings Act of 1959.

SEC. 8. LIMITATION ON MAXIMUM RENTAL RATE.

Section 322 of the Act of June 30, 1932 (47 Stat. 412; 40 U.S.C. 278a) is repealed.

SEC. 9. PROTECTION OF FEDERAL PROPERTY.

(a) REFERENCE TO GSA.—The Act of June 1, 1948 (62 Stat. 281; 40 U.S.C. 318-318d) is amended—

(1) by striking out "Federal Works Agency" each place it appears and inserting in lieu thereof "General Services Administration"; and

(2) by striking out "Federal Works Administrator" each place it appears and inserting in lieu thereof "Administrator of General Services".

(b) INCLUSION OF LEASED PROPERTY.—Section 1 of such Act is amended to read as follows:

"SECTION 1. SPECIAL POLICE.

"(a) APPOINTMENT.—The Administrator of General Services, or officials of the General Services Administration duly authorized by the Administrator, may appoint uniformed guards of such Administration as special policemen without additional compensation for duty in connection with the policing of all buildings and areas owned or occupied by the United States and under the charge and control of the Administrator.

"(b) POWERS.—Special policemen appointed under this section shall have the same powers as sheriffs and constables upon such property to enforce the laws enacted for the protection of persons and property, and to prevent breaches of the peace, to suppress affrays or unlawful assemblies, and to enforce any rules and regulations promulgated by the Administrator or such duly authorized officials of the Administration for the property under their jurisdiction; except that the jurisdiction and policing powers of such special policemen shall not extend to the service of civil process.".

(c) CONFORMING AMENDMENTS.—

(1) SECTION 2.—Section 2 of such Act is amended by striking out "Federal property" each place it appears and inserting in lieu thereof "property".

(2) SECTION 3.—Section 3 of such Act is amended by striking out "and over which the United States has acquired exclusive or concurrent criminal jurisdiction".

SEC. 10. TECHNICAL AMENDMENT.

The Act entitled "An Act to designate the United States Post Office and Courthouse in Pendleton, Oregon, as the 'John F. Kilkenny United States Post Office and Courthouse'" (Public Law 98-492; 98 Stat. 2271) is amended by striking out "Dorian" and inserting in lieu thereof "Dorion".

The SPEAKER pro tempore. Is a second demanded?

Mr. SHAW. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from North Carolina [Mr. LANCASTER] will be recognized for 20 minutes and the gentleman from Florida [Mr. SHAW] will be recognized for 20 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. LANCASTER].

Mr. LANCASTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 2790, commonly referred to as the Public Buildings Amendments of 1987 is designed to improve the efficiency and effectiveness of management of public buildings.

Currently, the Public Buildings Act of 1959 requires the submission of a prospectus which describes a proposed facility to be constructed, altered, purchased, acquired, or the space to be leased which involves a total expenditure in excess of $500,000 to Congress and approval by resolutions adopted by the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works, prior to an appropriation being made for the project. H.R. 2790 would raise the prospectus threshold from $500,000 to $1.5 million. In addition, the legislation would require alterations to leased space which cost in excess of $1.5 million to be subject to prospectus approval. The prospectus threshold was last adjusted in 1972 and inflation, since that time, has increased over 160 percent. As a result, projects of a much narrower scope now require prospectus review. Provision is made within the bill whereby the prospectus threshold can be adjusted by the Administrator of General Services annually to reflect a percentage increase or decrease in construction costs during the preceding calendar year. Further, the bill would prohibit the leasing of any space to accommodate major computer operations, secure activities related to the national defense or security and offices which would require major alterations or a permanent courtroom. These activities should be housed in leased space due to the high costs associated with alterations necessary to such space to house these activities which can never be recouped by the Government.

Mr. Speaker, new solutions to the problem of how best to provide space for Federal agencies in the most efficient and effective manner are warranted. A key concern is the considerable increase in cost for leased space which has increased from $364 million in 1975 to the current level of $1.2 billion. There has been an increased dependency on leased space and the cost of that space has nearly tripled. The expiration of long term, 10 and 20 year, leases that were made at favorable rates during the 1960's and early 1970's are beginning to have a significant impact in the rental of space cost. It is anticipated that unless reductions are made to the current leased space inventory, the rental of space budget will reach $2 billion by the mid to late 1990's. Further, the annual cost of leasing represents only a partial payment since the gross commitment of all general services outstanding leases currently total approximately $3 billion. Thus, the omission of the cost of all outstanding lease commitments for all future years from the budget grossly understates our actual long-term financial obligation. It skews decisionmaking away from the least costly method of acquiring Federal office space—construction and acquisition—and introduces a bias in favor of leasing. Lease commitments only have to be justified annually, whereas direct Federal construction and acquisition projects must show the full cost up front, in the first year.

The Congressional Budget Office has continuously stated that the current structure of GSA's financing of public buildings exhibits a proleasing bias to limit spending in the short run. The General Accounting Office has stated that direct Federal construction is the most advantageous for financing space acquisition. However, because of fiscal pressures purchase contracting may be the most practicable alternative.

The General Services Administration provides a total of approximately 227.4 million square feet of space to client agencies, of which 137.6 is Government owned and 89.8 is in leased space. In 1972, the GSA inventory was 219.7 million square feet of space, of which 157.8 was Government owned and 61.9 was leased.

H.R. 2790 authorizes the Administrator of General Services to issue debt instruments for purchase by the Secretary of the Treasury, but only to the extent authorized in annual appropriations acts, in amounts necessary to finance the acquisition or construction of public buildings. Legislative safeguards are further provided in the bill by prohibiting the construction or acquisition of a public building utilizing this method of financing unless a prospectus has been approved by resolution. Repayment of the debt incurred by GSA will not begin until the building is ready for occupancy, but shall not extend beyond 30 years. The mechanism employed in this legislation is similar to a mortgage on a home. The total debt incurred for the project would be recorded and scored but only the annual repayment of the debt would be counted as an actual Federal outlay. Similar authority has been used by the administration to provide for the construction of office space in Washington, DC, Oakland, CA, Miami, FL, and New Orleans, LA.

In addition, the bill authorizes the Administrator of General Services to utilize funds made available for rent for the leasing of space in buildings erected by a lessor on land owned by the Government. This provision of law has been included in appropriation acts and has been used to facilitate the construction of office space in Los Angeles, CA. This provision will permit greater utilization of Government-owned land.

The bill directs the Administrator to establish detailed specification requirements for buildings to be constructed for lease to, and predominant use by, the United States. Generally, Federal buildings are constructed to specifications which provide longer useful life and have special facilities and requirements not found in private construction. The installation of special facilities and requirements during construction can save millions of dollars over the term of any lease.

Currently, it is the General Services Administration's policy to follow local building codes and zoning ordinances to the fullest extent practical and comply with State, local, and Federal